



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE  
2369 WEST ORTON CIRCLE, SUITE 50  
WEST VALLEY CITY, UTAH 84119

m/003/016

In Reply Refer To

FWS/R6  
ES/UT

December 2, 2002

Steve Flock, Minerals Management Specialist  
Minidoka Ranger District  
Sawtooth National Forest  
3650 Overland Avenue  
Burley, Idaho 83318

RECEIVED

DEC 11 2002

DIV. OF OIL, GAS & MINING

Dear Mr. Flock :

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of November 1, 2002, announcing your intent to prepare an Environmental Assessment (EA) on the Dove Creek Operation proposal to expand quarry activities in northwest Box Elder County. The purpose of the project is to increase quartzite excavation facilities. The project will:

- Create two new quarry sites, 2.91 and 2.8 acres in size, respectively;
- Build or upgrade 8,000 feet of road, disturbing approximately 3 acres;
- Utilize blasting equipment, large trackhoes, and dump trucks to excavate and transport stones.

We are providing the following comments for your consideration in your EA.

Consistent with NEPA regulation 40 CFR § 1503.1(a)(1) that the action agency shall obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved, we are responding to your request for concerns and comments on this EA. In Section 1 of this letter we convey our concerns that should be addressed in the NEPA compliance document for this project. Section 2 of this letter addresses your Endangered Species Act (ESA) Section 7 responsibilities.

Section 1.

The site is hydrologically important, containing numerous springs and seeps. Potential impacts include: water contamination from production wastes; increased sedimentation from road traffic; loss or decrease in seep/spring activity or changes in ground water flow resulting from blasting activities; and effects to a nearby known spring snail site. Accordingly, we recommend the EA include a thorough hydrologic impact assessment of the area, including 1) maps of the seeps/springs in relation to roads, quarry pits, and waste storage locations, 2) surveys for



molluscs and sensitive amphibians, 3) management practices to be implemented for storage, transport, and disposal of quarrying waste products, and 4) a plan for monitoring the seeps/springs for hydrologic change. The EA should outline a course of action to be followed in the event blasting activities prove to have detrimental impacts to the seeps/springs.

We are concerned that increased roadage and blasting activities will have negative impacts to the environment and wildlife. Heavy truck traffic can cause soil compaction and increased stream sedimentation. Road crossings through drainages should be avoided, and, when necessary, mitigated with best management practices. Additional roads will increase fragmentation of habitat, creating barriers to wildlife movement, and will create more opportunity for direct mortality from vehicle collisions. Noise disturbance from road traffic and blasting activities may negatively affect wildlife, including raptor nesting and foraging.

We have concerns about the potential for impact to breeding or foraging habitat for raptors, as well as disruption of birds during breeding and nesting seasons. Federal agencies have a responsibility to raptors under authority of the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712), a strict liability law which makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. Executive Order 13186, issued on January 11, 2001, reinstituted the responsibilities of Federal agencies to comply with the MBTA. It also required development of a strategy for the Service to work with Federal agencies on conserving priority species by avoiding or minimizing unintentional take and taking actions to benefit these same species to the extent practicable. To that end, we recommend that raptor surveys and mitigation measures be developed in coordination with the Utah Division of Wildlife Resources (UDWR) and the Service.

We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck, January 2002) which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon.

The EA should address the proximity of the sagebrush grass community type and how impacts to sage grouse will be avoided or minimized. We recommend use of the *Guidelines to Manage Sage Grouse Populations and their Habitats* which was written to assist land managers in managing sage grouse habitats and populations (Connelly et al., 2000).

Noxious weeds will have greater potential to invade with increased road traffic and soil disturbance. Therefore, we recommend surveys for invasive plants, and use of practices to minimize the potential for introduction of non-natives. We recommend the use of native seed for any revegetation activities.



The EA should include a thorough description of the reclamation plans for the quarry pits. A step-wise implementation plan, timed to the stages of disturbance, should include discussion of waste disposal, revegetation of the site, and decommissioning, or at least closing, roads, as compatible with Forest Plan transportation management policy.

Section 2. Federal agencies have specific additional responsibilities under Section 7 of the ESA. To help you fulfill these responsibilities, we are providing an updated list of threatened (T), endangered (E) and candidate (C) species that may occur within the area of influence of your proposed action.

| <u>Common Name</u>           | <u>Scientific Name</u>                       | <u>Status</u> |
|------------------------------|--|---------------|
| Fat-whorled Pondsail         | <i>Stagnicola bonnevillensis</i>             | C             |
| June Sucker <sup>1</sup>     | <i>Chasmistes liorus</i>                     | E             |
| Lahontan Cutthroat Trout     | <i>Oncorhynchus (=Salmo) clarki henshawi</i> | T             |
| Bald Eagle <sup>2</sup>      | <i>Haliaeetus leucocephalus</i>              | T             |
| Western Yellow-billed Cuckoo | <i>Coccyzus americanus occidentalis</i>      | C             |

<sup>1</sup> Introduced, refugia population

<sup>2</sup> Wintering populations (only four known nesting pairs in Utah).

The proposed action should be reviewed and a determination made if the action will affect any listed species or their critical habitat. If it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action is "likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to the Service with a completed biological assessment and any other relevant information (50 CFR 402.12).

Candidate species have no legal protection under the ESA. Candidate species are those species for which we have on file sufficient information to support issuance of a proposed rule to list under the ESA. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and, thereby, possibly remove the need to list species as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

Only a Federal agency can enter into formal ESA section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation.



The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

Your attention is also directed to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

Please note that the peregrine falcon which occurs in all counties of Utah was removed from the federal list of endangered and threatened species per Final Rule of August 25, 1999 (64 FR 46542). Protection is still provided for this species under authority of the MBTA which makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. When taking of migratory birds is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors, their nests, or eggs, Migratory Bird Permits must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

The following is a list of species that may occur within the project area and are managed under Conservation Agreements/Strategies. Conservation Agreements are voluntary cooperative plans among resource agencies that identify threats to a species and implement conservation measures to proactively conserve and protect species in decline. Threats that warrant a species listing as a sensitive species by state and federal agencies and as threatened or endangered under the ESA should be significantly reduced or eliminated through implementation of the Conservation Agreement. Project plans should be designed to meet the goals and objectives of these Conservation Agreements.

Common Name

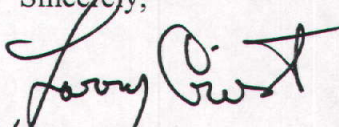
Least Chub

Scientific Name

*Notemigonus crysoleucas*

We appreciate the opportunity to provide these comments. If you need further assistance, please contact Betsy Herrmann, Fish and Wildlife Biologist, at the letterhead address or (801) 975-3330 ext. 139.

Sincerely,



for Henry R. Maddux  
Utah Field Supervisor

cc: UDWR - SLC  
Lynn Kunzler, DOGM



### References Cited

Connelly, J.W., M.A. Schroeder, A.R. Sands, and C.E. Braun. 2000. Guidelines to manage sage grouse populations and their habitats. *Wildlife Society Bulletin* 28(4): 967-985.

Romin, L.A., and J.A. Muck. 2002. U.S. Fish and Wildlife Service. Utah field office guidelines for raptor protection from human and land use disturbances.